

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1) GERRY G. THAMES,)	
Plaintiff,)	
vs.)	
)	Case Number: 13-CV-425-TCK-PJC
1) MARKEL EVANSTON INSURANCE)	
COMPANY,)	Removed from the District Court of
Garnishee)	Tulsa County, Oklahoma
)	Case Number: CJ-2011-3624
)	

NOTICE OF REMOVAL

1. Evanston Insurance Company, incorrectly identified as Markel Evanston Insurance Company by plaintiff Gerry G. Thames, is a Garnishee in an action brought against it in the District Court of Tulsa County, State of Oklahoma, and titled Gerry G. Thames, Plaintiff, vs. Brookside Title & Escrow, Inc, Debbie J. Stockton, d/b/a Brookside Title Escrow, Inc., First American Title Insurance Company, and First American Title and Trust Company, Defendants, Case Number CJ-2011-3624.

2. At the time of filing this action and at the present time, plaintiff and Garnishor Gerry G. Thames, was and is a resident and citizen of the State of Oklahoma. At the time of the filing of this action and at the present time, Garnishee Evanston Insurance Company was and is a corporation duly organized and existing under the laws of the State of Illinois and no other state, with its principal place of business in Illinois; it is not a citizen of Oklahoma.

3. Garnishor claims to be entitled to recover the sum of \$120,000 from Garnishee and, therefore, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. This is the kind of action of which the United States District Courts have original jurisdiction because of diversity of citizenship and sufficiency of amount in controversy.

5. Garnishor on June 19, 2013 filed his Application for Hearing to Determine Insurance Coverage, Exhibit 1, to take issue with Garnishee's denial of any coverage. It is this matter that the Garnishee removes to this United States District Court. This Notice of Removal is filed within the time allotted for removal to the United States District Court.

6. This matter involves Defendants below, Brookside and Stockton, operating a title and escrow business in Tulsa, Oklahoma. The Garnishor used Defendants Brookside and Stockton to handle the closing of a real estate purchase he made. Defendants Brookside and Stockton received money from the Plaintiff, but wrongfully misappropriated Plaintiff's money for other purposes. The Plaintiff sued Defendants Brookside and Stockton for breach of contract, civil conspiracy, and breach of fiduciary duty all as a result of the misappropriation, as well as conversion and fraud, in the state District Court of Tulsa County, Case Number CJ-2012-3624.

7. The Garnishee is an insurance company that insured Brookside and Stockton for certain errors and omissions in their title insurance business, Policy Number MG-

831136, Exhibit 4. Garnishee was never provided notice of the pendency of CJ-2012-3624 against Brookside and Stockton.

8. During the pendency of the action Defendant Stockton filed bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma, Case Number 12-11881-M, Chapter 7. Defendant below First American Title Insurance Company filed an Adversary Proceeding Complaint against Defendant Stockton in the Bankruptcy Court to determine dischargeability of Stockton's debt because of misappropriation, conversion, fraud, embezzlement and larceny, Adversary Proceeding Number 12-01065-M. On December 12, 2012, the bankruptcy court granted default judgment against the Defendant Stockton and held the debt was not dischargeable in bankruptcy as it involved misappropriation of funds. The Plaintiff then continued with his civil action in the state District Court of Tulsa County, Case Number CJ-2012-3624.

9. On February 20, 2013, the Honorable Rebecca B. Nightingale granted judgment in favor of Plaintiff Thames and against Brookside and Stockton in the amount of \$120,000 following an offer to confess judgment filed by Brookside and Stockton, Exhibit 3.

10. Garnishee was not provided notice that Brookside and Stockton had offered to confess judgment in CJ-2012-3624.

11. Upon receiving the judgment against Brookside and Stockton, the Plaintiff on May 24, 2013 attempted a Post-Judgment Garnishment against Garnishee, claiming Garnishee is liable to Plaintiff under terms of the said errors and omissions policy. On June 10, 2013 Garnishee denied it is liable under the terms of the policy, Exhibit 2.

Plaintiff then on June 19, 2013 filed its Application for Hearing to Determine Insurance Coverage, Exhibit 1, seeking to give notice of its intent to take issue with Garnishee's denial. It is this matter of determining the existence or non-existence of insurance coverage that the Garnishee removes to this United States District Court.

12. Copies of all process, pleadings, and orders filed or served upon Garnishee in the aforementioned state action are attached hereto, marked as Exhibits 1 through 4, and made a part hereof.

Respectfully submitted,

EVANSTON INSURANCE COMPANY,
-- Garnishee

By: /s/Tim N. Cheek
Tim N. Cheek – OBA #11257
D. Todd Riddles – OBA #15143
Tyler J. Coble – OBA #30526
Gregory Winningham – OBA #22773
CHEEK LAW FIRM, P.L.L.C.
311 North Harvey Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 272-0621
Facsimile: (405) 232-1707
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF MAILING

I certify that on the same date this Notice of Removal was filed in the United States District Court for the Northern District of Oklahoma that a true and correct copy of said Notice of Removal was served upon the above-named Plaintiffs, by mailing true and correct copies to Plaintiffs' attorneys of record Glennella P. Doss as listed below:

Glennella P. Doss
Doss Law Offices
Lansing Business Park
720 East Marshall
Tulsa, OK 74106

Telephone: (918) 582-0888

Facsimile: (918) 592-0822

I further certify that a copy of this Notice of Removal was mailed to the Sally Howe Smith, Court Clerk of Tulsa County, Oklahoma, 500 S. Denver Avenue, Tulsa, Oklahoma 74103.

/s/Tim N. Cheek

Tim N. Cheek/D. Todd Riddles/Tyler J. Coble/

Gregory D. Winningham